IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Writ Petition No. 1430 /2002

PETITIONER : K.P. Dewangan
S/o Shri H.P. Dewangan
Aged about 42 years,
Presently working as Cashier Cum Clerk Branch-Khadgaon,
Regional Rural Bank, Raigarh
H.O. Raigarh Regional Rural Bank Station Road, Raigarh (C.G.)

VERSUS

RESPONDENTS :- 1. The Chairman,
Raigarh Regional Rural Bank,
H.O.Station Road, Raigarh (C.G.).

2. Mr. A.K. Bhattacharya,
Auditor/Officiating General Manager, Raigarh Regional Rural Bank Station Road, Raigarh (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA

(45)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Writ Petition No.1430 of 2002

K.P. Dewangan

Vs.

The Chairman, Raigarh Regional Rural Bank and another

O R D E R

Post for 28.02.2005

Sd/-
Sunil Kumar Sinha
Judge

28-2-05
K.N. Nawab
(Adv.)

28/2/05
Ku. Pritha Ghoshal
Adv.

(46)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

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K.P. Dewangan

Vs.

The Chairman, Raigarh Regional Rural Bank and another

Appearance:

Shri S.N.Nande, counsel for the Petitioner.

Ku. Pritha Ghoshal, Counsel for the respondents.

ORDER
(28 .2.2005)

Sunil Kumar Sinha, J,

The petitioner is a Cashier-cum-Clerk in Raigarh Regional Rural Bank. He has called in question the validity, legality and propriety of his transfer order dated 26.6.2002 (Annexure P-1) by which he has been transferred from Branch Khadgaon to Branch Mahadeodand in the same capacity.

(2) The case of the petitioner is that he is working in the said establishment since the year 1984. The impugned order of transfer has been issued to victimize the petitioner violating the transfer policy as well as the Staff Service Regulation. The contention of the petitioner is that respondent no.2 who has signed the transfer

order was working in the capacity of officiating General Manager, therefore, he was having no authority to pass/sign the aforesaid order. The petitioner has also raised this ground that he is a victim of frequent transfers as in between 14.7.2000 to 26.6.2002 he has been transferred for 4 times. His contention is that these frequent transfers are the outcome of malafides and looking to the short period of stay at various places in between the aforesaid span of time, it would appear that the same is in violation of the transfer policy.

(3) Return has been filed by the respondents. The respondents have contended that in fact, the order of transfer has been issued after due approval of the Chairman of the Bank. It has been submitted that since the General Manager was on leave, the Acting General Manager Shri A.K.Bhattacharya (respondent no.2) has issued the transfer order for which the approval of the chairman as referred to above was taken. About the frequent transfers, reply has been given vide Para 5. It has been stated that before the impugned transfer order, the petitioner was posted at Branch Khadgaon on 14.7.2000. Under a general transfer, he was transferred from Khadgaon to Dharamjaigarh on 27.6.2001 but since the person posted at Dharamjaigarh namely Shri Sunil Kumar Nayak obtained stay order from the High Court, therefore, the petitioner was kept at Khadgaon itself. It has also been

contended that there is no violation of any policy and more over the policies are the only guidelines and the same are not enforceable in court of law. They have prayed for dismissal of the petition.

(4) I have heard learned counsel for the respective parties and have also perused the records.

(5) First of all, I will consider regarding the authority of respondent no.2 to sign the impugned transfer order. It has been contended vide Para 6.1 of the petition that respondent no.2 was officiating as General Manager and was not empowered to issue the order. It has also been contended that the Chairman is the only authority to issue an order of transfer of an employee. Reference has been made to the Document Annexure P-4 which according to the petitioner is a gist of Chapter VII of the Regulations dealing with the miscellaneous provisions. Regulation 59 deals with the matter of transferability. It has been stated that an officer or employee is liable to transfer to any office or branch of the Bank. Regulation 61 deals with the implementation and interpretation of Regulations. It has been provided vide regulation 61(1) that the Chairman may, from time to time, issue such instructions or directions as may, in his opinion, be necessary for giving effect to, or carrying out, the provisions of these regulations.

Regulation 61(2) provides that if any question arises as to the application or interpretation of any of these regulations, it shall be referred to the Board for decision. After bare perusal of these two regulations, it becomes clear that the Chairman is the authority for issuance of the instructions or the directions for giving effect to or carrying out any provisions of these regulations. Since regulation 59 deals with the transferability, therefore, there can be no doubt that the instructions or the decision about the transfer has to be taken by the Chairman as has been admitted by the petitioner also. Regulation 60 does not deal with the provisions about the manner of issuance/communication of the instructions or the decisions. If it is established that a decision has been taken by the Chairman, then, it cannot be said that the same cannot be communicated or issued by the General Manager under the instructions of the Chairman.

(6) In the present case, when the impugned order is properly analyzed it would become clear that the same is a communication of the order of transfer issued on certain decision. The very first Para of the order indicates that on certain decisions being taken, the impugned order of transfer is issued. It is not in dispute that at the relevant time, respondent no.2 was working as the officiating General Manager. If the order of transfer issued on a decision already taken has been signed by the Officiating General manager

then it cannot be said that the order is passed without jurisdiction. In fact, the General Manager has issued/communicated the order of transfer of the petitioner which was done on certain decisions.

(7) Learned counsel for the petitioner could not point out any such provision which may debar the officiating General Manager to sign any order/communication of transfer issued on certain decisions and with the approval of the Chairman who is admittedly the competent authority to make the same. There is no force in this submission and the same is not acceptable.

(8) The second contention is that since the petitioner has been subjected to frequent transfers, the action of respondents be held to be malafide. Referring to the representation (Annexure P-5), learned counsel for the petitioner submits that the petitioner was posted at Khadgaon on 14.7.2000. On 27.6.2001 he was transferred from Khadgaon to Dharamjaigarh and on 02.11.2001 he was again called back from Dharamjaigarh to Khadgaon. Thereafter, by the impugned order dated 26.6.2002 he has been again transferred from Khadgaon to Mahadeodand. The facts regarding the aforesaid transfers have not been disputed by the respondents. However, the respondents have submitted that in fact, when the petitioner was transferred from Khadgaon to Dharamjaigarh, the person working at Dharamjaigarh namely

Sunil Kumar Nayak obtained an order of stay from the High Court, therefore, the petitioner has to be kept at Khadgaon itself and in this situation only, he was brought back to Khadgaon. His posting at Dharamjaigarh from Khadgaon and reposting at Khadgaon from Dharamjaigarh in between 27.6.2001 and 02.11.2001 cannot be said to be an independent action on the part of the respondents because the same was due to the order of stay passed by the High Court as referred to above and no malafides can be attributed in this regard.

(9) The explanation given by the respondents in regard to the allegation of frequent transfers of the petitioner seems to be reasonable. If the period of transfer from Khadagoan to Dharamjaigarh and Dharamjaigarh to Khedagaon is excluded or the same is not taken into consideration, then it cannot be said that the petitioner is a victim of frequent transfers. It is difficult for this Court to consider the above chronological incidents of transfer of the petitioner to be the frequent transfers because the same were the consequences of the order of stay granted in favour of one Sunil Kumar Nayak referred to in Para 5 of the return which have not been factually controverted by the rejoinder. In the opinion of this Court, no malafides can be assessed on the part of the respondents on the basis of 4 incidents of transfers in between 14.7.2000 to 26.6.2002. It is not a case of victimization on

account of arbitrariness or malafides on the part of transferring authority and this contention has to be failed.

(10) Now coming to the third contention of the learned counsel that the transfer has been effected against the guidelines of the transfer policy (Annex P – Page-9), first of all it is made clear that these policies do not confer upon any employee a legally enforceable right. The order of transfer made even without following the guidelines cannot be interfered with by the Court unless it is visited by malafide or is made in violation of statutory provisions. I am fortified in my views by the decision of the Apex Court rendered in the matter of ***Union of India and others, Appellants –Vs- S.L. Abbas, Respondent (AIR 1993 SC 2444).*** More over, if the policy is properly analyzed, it is specifically mentioned in the clauses of period of retention that the same can be changed with the approval of the Chairman. {Please see note under Clause 4-1 (a)(b)(c)}. In this case, since the approval of the Chairman for transfer has been obtained as has been specifically mentioned in the return, then it can easily be inferred that the approval regarding period of retention has also been impliedly granted. Therefore, the submission regarding non-following of the policy also fails.

(11) In the series of judgments, the Apex Court has already held that the transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the transfer. ***(Please see 1995 (Suppl) 4 SCC 169 (Ambani Kanta Ray –Vs- State of Orissa)***.

(12) In the matter of ***National Hydroelectric Power Corporation Ltd. –Vs- Shri Bhagwan and another, reported in (2001) 8 SCC 574***, the Apex Court again highlighted the same position and emphasized that "no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide or stated to be in violation of statutory provisions prohibiting any such transfer, the courts cannot interfere with the such orders as a matter of routine. It has also been emphasized that the Courts or tribunals do not sit as appellate authorities to substitute their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned."

(13) More or less the same view has been reiterated by the Apex Court in the matter of ***Kendriya Vidyalaya Sangathan –Vs- Damodar Prasad Pandey and others reported in 2004 AIR S.C.W. 5563***.

(14) The above series of judgments pronounced by the Apex Court at various points of time go to show that a very limited scope is given for interference with an order of transfer passed by the competent authority. If the jurisdiction and the authority are not challengeable and the ground of violation of any statutory rule is not shown then unless the mala fide, arbitrariness or extraneous considerations are established by coming forward with definite pleadings and by bringing some evidence on record, it cannot be said that the transfer which has been shown to be on administrative exigency will not be accepted to be a normal transfer.

(15) In the present case, as stated above, the petitioner has been failed to establish that in fact, respondent no.2 was having no authority to sign the order of transfer. He has also been failed to establish any instance of malafides or arbitrariness or extraneous consideration on which the order can be quashed by this Court. When all these key factors regarding interference with an order of transfer have not been established, this court is left with no option

except to dismiss the petition. The petition has no merits and the same fails and is dismissed without any order as to the cost.

Accordingly, I.A.No.3618/2003 stands disposed of.

Sd/-
Sunil Kumar Sinha
Judge

/Rao/